

JOHN R. KROGER
Attorney General
MARC ABRAMS #89014
Senior Assistant Attorney General
Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
Telephone: (503) 947-4700
Fax: (503) 947-4791
Email: marc.abrams@doj.state.or.us

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

MONICA EMELDI,

Plaintiff,

v.

UNIVERSITY OF OREGON, an Agency and
Instrumentality of the State of Oregon,

Defendant.

Case No. 6:08-cv-06346 HO

**SECOND AFFIDAVIT OF MARC ABRAMS
IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT**

STATE OF OREGON)
) ss.
County of Marion)

I, Marc Abrams, being duly sworn, depose and state:

1. I am a Senior Assistant Attorney General in the Trial Division of the State of Oregon Department of Justice, and am counsel of record for the University of Oregon.

2. Attached to this affidavit as Exhibit "A" are true and correct copies of excerpts of the deposition of Cindy Herr, taken April 5, 2010.

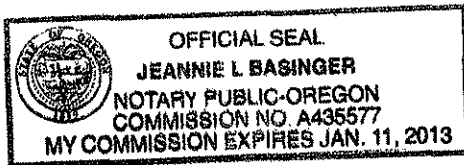
3. Attached to this affidavit as Exhibit "B" are true and correct copies of excerpts of the deposition of Jeffrey Sprague, taken April 5, 2010.


4. Attached to this affidavit as Exhibit "C" are true and correct copies of excerpts of the deposition of Robert Horner, taken February 16, 2010.

DATED this 7th day of May, 2010.


MARC ABRAMS
Senior Assistant Attorney General

SUBSCRIBED AND SWORN to before me this 7th day of May, 2010.




Notary Public for Oregon
My Commission Expires: 1-11-13

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MONICA EMELDI,)
Plaintiff,)
vs.) No. 08-6346-HO
UNIVERSITY OF OREGON, an Agency)
and Instrumentality of the)
State of Oregon,)
Defendant.)

DEPOSITION OF CINDY HERR

April 5th, 2010

Monday

1:45 P.M.

THE DEPOSITION OF CINDY HERR was taken at
Johnson Hall, the University of Oregon, Eugene,
Oregon, before Robin Cassidy-Duran, CSR-RPR,
Certified Shorthand Reporter in and for the State of
Oregon.

Cindy Herr

6

1 one thing at a time, in lawyer language.

2 THE WITNESS: Okay.

3 A. Not to the best of my recollection.

4 BY MR. FORCE:

5 Q. Okay. Well, do you recall ever telling
6 Monica Emeldi that you had been present at a meeting
7 where Dr. Horner had stated something to the effect
8 of changing Ms. Emeldi's degree track from a Ph.D.
9 track to a doctorate of education track?

10 A. No.

11 Q. Do you know Monica Emeldi?

12 A. Yes.

13 Q. How do you know her?

14 A. I met her when we were both taking a
15 psychology statistics class in the fall 2006.

16 Q. Did she ever ask you to be a member of her
17 dissertation committee?

18 A. She asked me if I could serve on her
19 dissertation committee.

20 Q. Did that occur before or after you were in
21 that class with her in the fall of 2006?

22 A. I don't recall if it was during that time
23 or afterwards. It would not have been before.

24 Q. Okay. What's your present position?

25 A. I am an assistant professor of special

Cindy Herr

10

1 of 2006?

2 A. I believe that it was after that.

3 Q. Were you thinking about Monica Emeldi as
4 one of the people who believed that they were not
5 getting sufficient support?

6 A. I don't remember if I was thinking that.
7 She was not the reason I went to talk to Dr. Bullis.

8 Q. What was the reason you went and talked to
9 Dr. Bullis?

10 A. It was concerning a different student.

11 Q. Do you recall whether you've had any email
12 communications with any other faculty members
13 regarding Monica Emeldi?

14 A. I have not had any communication through
15 emails with other faculty members about Monica.

16 Q. Have you had conversations with other
17 faculty members about Monica specifically?

18 A. No. I was very careful not to do that.

19 Q. Why?

20 A. Because I didn't know anything except
21 Monica's version of information.

22 MR. FORCE: All right. That's all I
23 have.

24 / / / / /

25 / / / / /

Cindy Herr

11

EXAMINATION

BY MR. ABRAMS:

Q. I have a few questions, Dr. Herr.

Mr. Force asked you about the conversation you had with Dean Bullis about the difficulties women were facing in the special education doctoral program.

At any time did you do an examination to empirically determine whether they were taking longer to get a degree or not getting a degree relative to male Ph.D. candidates in special ed?

A. No, I did not.

MR. ABRAMS: No further questions.

EXAMINATION

BY MR. FORCE:

Q. Well, let me follow up on that. Was it your observation that women Ph.D candidates were achieving their degrees with the same rate as males?

A. I did not look into whether males were having difficulty or not, so I can't make that comparison, and didn't make that comparison at the time.

MR. FORCE: All right. Thank you.

MR. ABRAMS: No further questions.



(Deposition concluded at 1:59 p.m.)

State of Oregon)
)
 County of Lane) ss.

I, Robin Cassidy-Duran, CSR-RPR, a Certified Shorthand Reporter for the State of Oregon, certify that the witness was sworn and the transcript is a true record of the testimony given by the witness; that at said time and place I reported all testimony and other oral proceedings had in the foregoing matter; that the foregoing transcript consisting of 11 pages contains a full, true and correct transcript of said proceedings reported by me to the best of my ability on said date.

If any of the parties or the witness requested review of the transcript at the time of the proceedings, such correction pages are attached.

IN WITNESS WHEREOF, I have set my hand and CSR seal this 14th day of April 2010, in the City of Eugene, County of Lane, State of Oregon.

Robin Cassidy-Duran, CSR-RPR

CSR No. 90-0090

ccreporting.com
 541-485-0111

Exhibit A, Page 5 of 5
 Second Affidavit of Marc Abrams
 Emeldi v. University of Oregon
 U.S. District Court Case No. 6:08-cv-06346-HO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MONICA EMELDI,)
Plaintiff,)
vs.) No. 08-6346-HO
UNIVERSITY OF OREGON, an Agency)
and Instrumentality of the)
State of Oregon,)
Defendant.)

DEPOSITION OF JEFFREY SPRAGUE

April 5th, 2010

Monday

1:02 P.M.

THE DEPOSITION OF JEFFREY SPRAGUE was taken
at Johnson Hall, the University of Oregon, Eugene,
Oregon, before Robin Cassidy-Duran, CSR-RPR,
Certified Shorthand Reporter in and for the State of
Oregon.

Jeffrey Sprague

16

1 the hall from me.

2 BY MR. FORCE:

3 Q. Do you have any recollection of the
4 conversation you did have with Ms. Eisert about
5 Monica Emeldi's need for a new dissertation chair?

6 A. Yes.

7 Q. Just go ahead, in your own words, what you
8 remember of the conversation -- both what you said
9 and what she said.

10 A. Yes. I recall we talked -- pretty common.
11 We talked about what I understand to be the proposed
12 content of Monica's dissertation, and Debby was
13 asking me, you know, as a colleague, what was my
14 recommendation regarding her workload, her ability
15 to be a support relative to the content area.

16 And we agreed, given Debby's expertise,
17 which is primarily in developmental disabilities --
18 she is a clinical psychologist -- that the focus of
19 Monica's work, it wasn't appropriate for her to be a
20 chair at that level, not being a content expert in
21 that area.

22 Q. Who would be a content expert in the area
23 of Ms. Emeldi's dissertation?

24 A. Me, Rob Horner. At the time, our
25 colleague George Sugai, although George has moved

Jeffrey Sprague

18

1 rephrase and clean that question up?

2 BY MR. FORCE:

3 Q. I'm just trying to find out who in the
4 University is tasked to monitor whether people have
5 dissertation committees and dissertation chairs and
6 whether they are making progress.

7 A. There's an academic secretary that keeps
8 track of the details. I don't fully understand, but
9 the graduate school is also notified at those key
10 points. One is advancement to candidacy and then
11 the other approval of the dissertation proposal, and
12 then final approval of the dissertation.

13 Q. Okay. Who is the academic secretary?

14 A. Currently it is Emily Cornell, although
15 she was not here -- She is relatively new. I don't
16 know exactly when she started but --

17 Q. Do you recall who her predecessor may have
18 been?

19 A. Probably Melissa Finch, who actually still
20 works in the department, but she has a different
21 role.

22 Q. If you were asked today by Ms. Emeldi
23 whether you would serve as her chair, would you do
24 so?

25 A. Yes, I would consider it.

Jeffrey Sprague

20

1 that frame, I always defer to anyone that's a chair.

2 You want to sort of put that back on the
3 student and the chair to narrow it down, so I'd
4 certainly give an opinion but, from my perspective,
5 the final two pieces are the chair and student need
6 to come to the committee basically saying this is
7 where we've narrowed it to, and then the committee
8 collectively approves or disapproves if there would
9 be major changes to the content.

10 MR. FORCE: All right. Thanks.

11 MR. ABRAMS: Okay. I have a couple of
12 questions.

13

14

EXAMINATION

15 BY MR. ABRAMS:

16 Q. Dr. Sprague, did you explicitly recommend
17 that Dr. Eisert not take chairmanship of
18 Ms. Emeldi's committee?

19 A. I'd really characterize it as a collegial
20 conversation. Debby works with me, not for me so --
21 I think she felt some trepidation because of what I
22 already said just relatively to the content and her
23 workload and that sort of thing.

24 Q. Well, when you say workload, what were the
25 workload concerns?

ccreporting.com
541-485-0111

Exhibit B, Page 4 of 7
Second Affidavit of Marc Abrams
Emeldi v. University of Oregon
U.S. District Court Case No. 6:08-cv-06346-HO

Jeffrey Sprague

21

1 A. Well, Debby has a unique position. She
2 works about three-quarter time for the Child
3 Development & Rehab Center, so she actually
4 functions as a traditional psychologist in that
5 entity, which is actually affiliated with Oregon
6 Health Sciences University.

7 And she has, again, roughly 20 to 25
8 percent -- I don't -- again, I don't -- her FTE is
9 actually under -- it is in the same building as the
10 University Center of Excellence on Developmental
11 Disabilities. It used to be called the University
12 Affiliated Program, and she has a role in basically
13 running that grant so --

14 Q. And were you concerned about the amount of
15 time that it would take her to chair Ms. Emeldi's
16 committee?

17 A. Yes. Time and, really, expertise to drill
18 down the content level.

19 Q. Mr. Force asked would you be willing to
20 chair Ms. Emeldi's committee if she came to you
21 today.

22 Did Ms. Emeldi ever come to you and ask
23 you to chair her committee?

24 A. Not that I recall.

25 Q. Okay. Had she done so, would you have

Jeffrey Sprague

22

1 been willing to consider it back in 2007?

2 A. Yes, I would have.

3 MR. ABRAMS: Okay. No further
4 questions. Thank you.

5 MR. FORCE: Okay. Nothing more.

6 (The deposition was concluded
7 at 1:32 p.m.)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ccreporting.com
541-485-0111

Exhibit B, Page 6 of 7
Second Affidavit of Marc Abrams
Emeldi v. University of Oregon
U.S. District Court Case No. 6:08-cv-06346-HO

State of Oregon)
)
 County of Lane) ss.

I, Robin Cassidy-Duran, CSR-RPR, a Certified Shorthand Reporter for the State of Oregon, certify that the witness was sworn and the transcript is a true record of the testimony given by the witness; that at said time and place I reported all testimony and other oral proceedings had in the foregoing matter; that the foregoing transcript consisting of 22 pages contains a full, true and correct transcript of said proceedings reported by me to the best of my ability on said date.

If any of the parties or the witness requested review of the transcript at the time of the proceedings, such correction pages are attached.

IN WITNESS WHEREOF, I have set my hand and CSR seal this 18th day of April 2010, in the City of Eugene, County of Lane, State of Oregon.

Robin Cassidy-Duran, CSR-RPR

CSR No. 90-0090

ccreporting.com
 541-485-0111

Exhibit B, Page 7 of 7
 Second Affidavit of Marc Abrams
 Emeldi v. University of Oregon
 U.S. District Court Case No. 6:08-cv-06346-HO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MONICA EMELDI,)
Plaintiff,)
vs.) No. 08-6346-HO
UNIVERSITY OF OREGON, an agency)
and Instrumentality of the)
State of Oregon,)
Defendant.)

DEPOSITION OF ROBERT H. HORNER

February 16th, 2010

Tuesday

1:30 P.M.

THE DEPOSITION OF ROBERT H. HORNER was
taken at CC Reporting & Videoconferencing, 172 East
8th Avenue, Eugene, Oregon, before Robin
Cassidy-Duran, CSR-RPR, Certified Shorthand Reporter
in and for the State of Oregon.

Rob Horner

16

1 Assuming facts not in evidence, and the recitation
2 leading up to the question. You can go ahead and
3 answer the question.

4 BY MR. FORCE:

5 Q. Do you recall in October or November of
6 2007 talking to Marian Friestad about Monica Emeldi?

7 A. I don't recall the date, but I do recall a
8 conversation with Marian Friestad in which she
9 informed me that Ms. Emeldi had filed a concern
10 related to her moving forward.

11 Q. Okay. Where was that conversation between
12 yourself and Ms. Friestad?

13 A. It was on the telephone.

14 Q. Okay. Did you ever see any documents that
15 Ms. Emeldi had given Ms. Friestad in connection with
16 her meeting with Marian Friestad?

17 A. No.

18 Q. Did Ms. Friestad share with you the
19 contents of any documents that she received from
20 Ms. Emeldi?

21 A. Dr. Friestad did not share with me the
22 contents of documents. She simply told me that
23 there was a concern and she asked -- basically she
24 did most of the talking and she asked me for
25 documentation.

Rob Horner

29

1 too?

2 A. That is right.

3 Q. Did you recommend at a faculty meeting of
4 some kind on November 27, 2007, that Ms. Emeldi be
5 directed to obtain a doctorate of education degree
6 rather than a Ph.D. because she intended to work in
7 a clinical applied setting?

8 A. I don't remember that.

9 Q. Do you remember attending any kind of a
10 faculty meeting on November 27, 2007?

11 A. No.

12 Q. Do you keep records of your attendance of
13 faculty meetings?

14 A. I don't.

15 Q. What kinds of faculty meetings are held in
16 the College of Education in which degrees to be
17 awarded doctoral students are discussed?

18 A. The doctoral committee meetings.

19 Q. Okay. As opposed to -- are you talking
20 about a doctoral committee -- Is there a doctoral
21 committee for the School of Education?

22 A. No. Doctoral committee per department, so
23 the special education doctoral committee.

24 Q. Okay. See if this refreshes your
25 recollection. This November 27, 2007, meeting --

Rob Horner

31

1 A. That's a different question.

2 MR. ABRAMS: He is right.

3 MR. FORCE: It is? Okay.

4 BY MR. FORCE:

5 Q. Well, I'll ask you why first.

6 A. I received a memo from Ms. Emeldi
7 indicating that she was identifying me as a barrier
8 to her advancement and indicating that she was
9 concerned about my unwillingness to move her
10 doctoral committee forward.

11 It is completely a student's prerogative
12 who they choose to be their doctoral chair, and we
13 clearly had a disagreement about the quality of the
14 doctoral proposal, the dissertation proposal and, as
15 such it seemed that the most reasonable thing for me
16 to do was to step aside.

17 She identified me as a barrier, and I
18 wished her well and encouraged her to do what she
19 was going to do. Notice at the bottom I stayed as
20 her program advisor simply because her program
21 committee had already done most of its process and
22 the only task that she had remaining was to submit
23 her competency portfolio and have that reviewed by
24 the committee.

25 Q. If it was the student's prerogative to

Rob Horner

32

1 choose the members of their dissertation
2 committee --

3 A. That's not what I said.

4 Q. Okay. Correct me. What was wrong with
5 that?

6 A. The student chooses the dissertation
7 chair.

8 Q. Okay.

9 A. The chair, with the student, then selects
10 the dissertation committee. That committee must be
11 approved by the graduate school.

12 Q. Okay. Well, if it is the student's
13 prerogative to select the chair, and Ms. Emeldi had
14 not asked you to step aside or chosen anyone else to
15 be the dissertation chair, had you reached a
16 conclusion that you did not wish to be her
17 dissertation chair?

18 A. What I concluded was exactly what I said:
19 It is my choice to continue as a chair or not
20 continue as a chair.

21 She sent me an email or a memo -- she gave
22 me a memo indicating that she was significantly
23 concerned that I was a barrier to her advancement.
24 That is not a role I am interested in playing,
25 therefore it seemed that the logical step was for

Rob Horner

33

1 her to work with someone who would be able to
2 promote her objectives. I chose to stop being the
3 chair of her dissertation committee.

4 Q. Okay. Did you communicate that fact to
5 others -- anyone other than Monica Emeldi that you
6 had resigned?

7 A. I would have at the next doctoral
8 committee meeting indicated that I was no longer the
9 chair of her committee, whenever that happened.

10 Q. Did you discuss at any point with other
11 faculty members whether they wished to become her
12 dissertation chair?

13 A. No.

14 Q. Did any other faculty members contact you
15 and ask why you were no longer her dissertation
16 chair?

17 A. No.

18 Q. Did you tell the people at the next
19 doctoral committee meeting why you had resigned as
20 her dissertation chair?

21 A. I don't recall.

22 Q. Well, you testified a minute ago that you
23 do not recall discussing at that doctoral committee
24 meeting a change in direction from a Ph.D. track to
25 a doctor of education track.

Rob Horner

37

1 annual status reports to all students in the
2 program. Every doctoral student in the special ed
3 program received a memo like this from their program
4 committee.

5 Q. Do you ever recall having a conversation
6 with anyone about the advisability of Ms. Emeldi
7 seeking a doctor of education degree instead of a
8 Ph.D.?

9 A. No.

10 Q. Did you ever talk to Monica Emeldi about
11 that possibility?

12 A. Not that I recall.

13 Q. Okay. Do you recall her ever suggesting
14 to you that she would prefer -- or that she was
15 considering changing her program from a Ph.D.
16 program to a doctor of education program?

17 A. I don't recall.

18 (Deposition Exhibit No. 3
19 marked for identification.)

20 BY MR. FORCE:

21 Q. Go ahead and take a look at that and then
22 I will ask you some questions about it.

23 A. (Pause.)

24 (A discussion was had off
25 the record.)

ccreporting.com
541-485-0111

Exhibit C, Page 7 of 11
Second Affidavit of Marc Abrams
Emeldi v. University of Oregon
U.S. District Court Case No. 6:08-cv-06346-HO

Rob Horner

38

1 BY MR. FORCE:

2 Q. Have you ever seen a copy of this document
3 before?

4 A. No.

5 Q. Have you ever heard about the existence of
6 this document before?

7 A. Yes.

8 Q. How did you hear about it before?

9 A. Dean Bullis told me -- when I received the
10 call from Dr. Friestad about a problem, one of my
11 concerns was that a not-quite-grievance situation
12 had gone to the dean of the graduate school rather
13 than following University policy.

14 There had not been a presentation to the
15 faculty member, to the department head, to the dean,
16 from what I understood.

17 I also contacted the dean because I
18 thought that something of that nature should be
19 something that he would be concerned about, and at
20 that point he said -- that was the point at which he
21 told me there had been a memo, but he did not tell
22 me the content -- a memo in which students had
23 indicated changes that needed to occur within the
24 college.

25 Q. Did he mention, among those changes, a

Rob Horner

39

1 request that there be more qualified women hired in
2 tenured faculty positions in special education?

3 A. He didn't. But I would totally support
4 that. In fact, I have been the chair of special
5 committees where we went out and recruited and hired
6 women in the College of Education.

7 Q. How many tenured female faculty members
8 are there in special education now?

9 A. Well, the Department of Special Education
10 includes Special Education and Communication
11 Disorders and the School of Psychology, so there are
12 quite a few.

13 I think four in Special Education, three
14 in the School of Psychology, four in Communication
15 Disorders.

16 Q. Who are the ones in Special Education?

17 A. Renee Van Norman.

18 Q. Pardon me?

19 A. I would want to get their names right. I
20 would have to go back and look.

21 Q. Okay. You're certain about
22 Ms. Van Norman?

23 A. Yes.

24 Q. Were you the head of the Department of
25 Special Education in 2007?

Rob Horner

40

1 A. I do not think so. I was the department
2 head for five years, but that was a while ago.

3 Q. Okay.

4 A. Again, that would be in my vitae.

5 Q. Okay.

6 A. I think Mike Benz may have been the
7 department head.

8 Q. Okay.

9 A. But I'm not sure exactly when he left.

10 Q. Okay. Well, do you recall what Mr. Bullis
11 said about a document during that conversation you
12 just referred to?

13 A. He told me that there was a document that
14 had requested a number of changes within the
15 college.

16 Q. Did he tell you that the document was
17 authored by Ms. Emeldi?

18 A. Yes. Actually, he said it was from a
19 group of students. He identified it as coming from
20 her, but representing a group that -- my
21 understanding is that he actually requested and
22 invited this, at least from what I understood from
23 his comments.

24 Q. Okay. How long have you served on the
25 same faculty as Mr. Bullis -- Dr. Bullis?

State of Oregon)
)
 County of Lane) ss.

I, Robin Cassidy-Duran, CSR-RPR, a Certified Shorthand Reporter for the State of Oregon, certify that the witness was sworn and the transcript is a true record of the testimony given by the witness; that at said time and place I reported all testimony and other oral proceedings had in the foregoing matter; that the foregoing transcript consisting of 45 pages contains a full, true and correct transcript of said proceedings reported by me to the best of my ability on said date.

If any of the parties or the witness requested review of the transcript at the time of the proceedings, such correction pages are attached.

IN WITNESS WHEREOF, I have set my hand and CSR seal this 3rd day of March 2010, in the City of Eugene, County of Lane, State of Oregon.

Robin Cassidy-Duran



Robin Cassidy-Duran, CSR-RPR

CSR No. 90-0090

ccreporting.com
 541-485-0111

Exhibit C, Page 11 of 11
 Second Affidavit of Marc Abrams
 Emeldi v. University of Oregon
 U.S. District Court Case No. 6:08-cv-06346-HO

CERTIFICATE OF SERVICE

I certify that on May 7, 2010, I served the foregoing SECOND AFFIDAVIT OF MARC ABRAMS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT upon the parties hereto by the method indicated below, and addressed to the following:

David C. Force
96 E Broadway Ste 2
PO Box 10972
Eugene OR 97440
Of Attorneys for Plaintiff

☐ HAND DELIVERY
☐ MAIL DELIVERY
☐ OVERNIGHT MAIL
☐ TELECOPY (FAX) 541 686-1594
☐ E-MAIL forcelaw@aol.com;
forcelawgm@aol.com
☒ E-FILE



MARC ABRAMS #89014
Senior Assistant Attorney General
Trial Attorney
Tel (503) 947-4700
Fax (503) 947-4793
marc.abrams@doj.state.or.us
Of Attorneys for Defendant